

RULEMAKING NOTICE FORM

Notice Number

2009-20

Rule Number

**He-C 6423;
He-C 6347.03(v), 6347.06;
He-C 6347.08 heading**

1. Agency Name & Address:

**NH Department of Health & Human Services
Division of Children, Youth & Families
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority:

**RSA 170-E:34, I(f);
RSA 170-G:5**

3. Federal Authority:

N/A

4. Type of Action:

Adoption

X

Amendment

X

Repeal

X

Readoption

Readoption w/amendment

5. Short Title: **FOSTER FAMILY HOME RATE-SETTING and CERTIFICATION FOR PAYMENT STANDARDS FOR FOSTER CARE SERVICES**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

When children's safety in their own homes is jeopardized, they may be temporarily placed away from their families in foster care homes. The Division for Children Youth and Families (DCYF) and the Division of Juvenile Justice Services (DJJS) provide board and care payments to the providers of foster family care as they work with the child and his or her family. He-C 6423 is a new rule which describes the methodology to be used to calculate a daily rate of reimbursement for foster family care including room, board and clothing.

This rule promulgation also repeals He-C 6347.06. It also amends He-C 6347.03 and editorially changes the section heading for He-C 6347.08, which describe the certification requirements for supplemental foster care providers, as this type of payment is being eliminated by the repeal of He-C 6347.06.

6. (b) Brief description of the groups affected:

The proposed rules affect those foster family homes, licensed pursuant to He-C 6446 and certified pursuant to He-C 6347, in which children are placed by DHHS.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section	Statute Implemented
He-C 6423.01 – 6423.06	RSA 170-E:34, I(f)
He-C 6347.03(v) (deleted)	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6347.06 (repealed)	RSA 170-G:4, XVIII; RSA 170-G:5; RSA 170-E:34

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Michael Holt**

Title: **Rules Coordinator**

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/DHHS/ADMINRULEMAKING/default.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, March 20, 2009**

☒Fax

☒E-mail

☐Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, March 10, 2009 at 10:00 AM**

Place: **129 Pleasant St., Brown Building, Auditorium, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 09:015, dated 2/05/09

Fiscal Impact Statement for Department of Health and Human Services rules governing Foster Family Home Rate-Setting and Certification For Payment Standards For Foster Care Services. [He-C 6423; He-C 6347.03, 6347.06, 6347.08]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

The Department states there are no existing rate setting methodology rules, but when the proposed rules are compared to existing practice, the Department estimates a decrease in state general fund expenditures of \$523,651, and a decrease in federal fund expenditures of \$219,039 annually. The Department states the proposed rules may increase costs to certain state citizens to the extent they are impacted by the changes to the rate-setting methodology.

2. Cite the Federal mandate. Identify the impact of state funds:

No federal mandate; no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

There are no existing rate-setting methodology rules. A cost comparison has been made between the existing practice and the proposed rules. Currently, foster family care is paid on a two-tier system. Foster families fall within two categories: (1) general foster care for families initially entering into the foster care system, and (2) specialized foster care for families who have received additional training and are therefore able to care for children with more complex needs. Currently, all foster families receive a daily payment based on the fostering category required for the child and the age of the child. They also receive a daily clothing allowance and special occasion allowances to assist with birthdays, holidays and back to school costs. In addition, a foster family may be eligible to receive a supplemental payment, which is a level of additional daily payment based on the intensity of care and services provided by foster parents to children who require more than customary care. With this rule, DCYF and DJJS are redesigning the foster family care payment system to provide a more equitable methodology for reimbursing foster families for their services. Foster families will continue to fall within two foster care categories of general and specialized; however, supplemental payments and special occasion allowances will be eliminated. The general and specialized foster care rates will be based on USDA annual estimates of expenditures to raise a child from birth through age 17. In addition to board and care costs, the USDA estimates include many of the expenditures that are currently paid through supplemental and special occasion allowances. The Divisions will continue to pay a daily clothing allowance. The estimated cost saving of the proposed rule compared to the existing practice is \$742,690. The savings were calculated by targeting 80% and 105% of the 2007 USDA estimated expenditures for general and specialized foster family care payments, respectively. The state general fund share of the estimated savings would be \$523,651, and the federal share would be \$219,039. Additionally, there would be indeterminable future cost savings in federal funds as a result of the change in the Adoption Assistance Program identified in B below.

B. To State citizens and political subdivisions:

Benefits to the citizens of the state will result from the rule, as it supports a standard methodology for the establishment of reimbursement rates for foster family care. The new methodology will be based on federal cost estimates for raising a child and will provide for a more equitable distribution of financial resources. General and specialized foster care rates will increase as a result of this rule; however, the elimination of supplemental foster care payments will result in about 25% of the foster family homes receiving a net decrease in daily payments. The Department is currently reviewing the cases that are financially impacted by the elimination of the supplemental foster care payments to make an informed decision on the need for families to access other department or community-based resources. Title IV-E, Adoption Assistance Program Policy, states that the amount of the adoption assistance payment cannot exceed the amount the child would have received if he or she had been in a foster family home. The proposed rule in conjunction with the elimination of supplemental payments will reduce the maximum adoption subsidy from \$65.27 to \$29.14. Existing adoption subsidy agreements will not change; however, new subsidy agreements will be negotiated within the parameters of the new maximum.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule creates a new program or responsibility, and expands and modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-C 6423 cited and to read as follows:

CHAPTER He-C 6400 PROGRAM AND SERVICE INFORMATION

PART He-C 6423 FOSTER FAMILY HOME RATE-SETTING

Statutory Authority: RSA 170-E:34, I(f)

He-C 6423.01 Purpose. When children must be temporarily placed away from their families, the department of health and human services (DHHS) provides board, care, and clothing payments to the providers of foster family homes as they work with the child and his or her family. These rules standardize the method for reimbursing foster family homes.

He-C 6423.02 Applicability.

(a) These rules shall apply to those foster family homes, licensed pursuant to He-C 6446 and certified pursuant to He-C 6347 in which children are placed by DHHS.

(b) These rules shall not apply to private child-placing agencies pursuant to RSA 170-E:25, IV, that establish their own rates.

He-C 6423.03 Definitions.

(a) "Eligible child" means a child removed from their home by court order or through a voluntary agreement whose needs for out of home care can be met by a general, specialized, adolescent, emergency or respite foster family home.

He-C 6423.04 Rate-Setting Methodology.

(a) All foster family home rates established by DHHS shall:

(1) Be determined using the mid-level, estimated average annual expenditures on a child by families from the ES-1 table of the estimates contained in the U.S. Department of Agriculture's (USDA) annual report, "Expenditures on Children by Families, 2007"; and

(2) Be categorized into the following age levels of the child in care:

- a. Birth through 5 years;
- b. Six years through 11 years; and
- c. Twelve years through 19 years.

(b) General foster family home rates for eligible children shall be up to 80% of the mid-level figures of the USDA's "Expenditures on Children by Families, 2007", excluding:

- (1) Health care costs;
- (2) Child care costs up to age 12; and
- (3) Clothing costs.

(c) Specialized and adolescent foster family home rates for eligible children shall be up to 105% of the mid-level figures of the USDA's "Expenditures on Children by Families, 2007", excluding:

- (1) Health care costs;
- (2) Child care costs up to age 12; and
- (3) Clothing costs.

(d) Emergency foster family home rates for eligible children shall:

- (1) Be up to 100% of the mid-level figures of the USDA's "Expenditures on Children by Families, 2007"; and
- (2) Exclude:
 - a. Health care costs;
 - b. Child care costs up to age 12; and
 - c. Clothing costs.

(e) Respite foster family home rates for eligible children shall be up to 100% of the mid-level figures of the USDA's "Expenditures on Children by Families, 2007", excluding;

- (1) Health care costs;
- (2) Child care costs up to age 12; and
- (3) Clothing costs.

(f) Clothing rates shall be:

- (1) Up to 80% of the average mid-level figures of the clothing rate of the USDA's "Expenditures on Children by Families, 2007"; and
- (2) Paid to general, specialized and adolescent foster parents.

(g) The rates established pursuant to He-C 6423 are contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DHHS be liable for any payments hereunder in excess of such available appropriated funds.

He-C 6423.05 Annual Review. The foster family home rates shall be reviewed annually by DHHS, no later than October 1, following the USDA's release of the annual report "Expenditures on Children by Families" for the previous year, pursuant to RSA 170-G:4, XVII-a.

He-C 6423.06 Notification. Notice shall be provided to the foster family home providers when rates are changed.

Amend He-C 6347.03, effective 9-20-08 (Document #9266), by deleting paragraph (v), cited and to read as follows:

PART He-C 6347 CERTIFICATION FOR PAYMENT STANDARDS FOR FOSTER CARE SERVICES

Statutory Authority: RSA 170-G:4 XVIII, RSA 170-G:5

He-C 6347.03 Definitions.

~~(v) “Supplemental foster care” means levels of additional payments, based on the intensity of care and services provided by foster parents for foster children who reside in foster family care and require more than customary care.~~

Repeal He-C 6347.06, effective 9-20-08 (Document #9266), and hold said section in reserve as follows:

He-C 6347.06 ~~Requirements for Supplemental Foster Care Providers.~~ RESERVED

~~—— (a) Supplemental foster care shall be provided for children who are placed in licensed foster family homes and who require a level of care that exceeds the customary care of general or specialized foster care.~~

~~—— (b) Supplemental foster care service shall include 4 levels of payment based on areas of the child’s functioning.~~

~~—— (c) The areas shall be related to the child’s behaviors, conditions, and needs, and to the resources that the foster parent shall be required to bring to the care of the child in placement.~~

~~—— (d) The areas of functioning shall be:~~

~~(1) Behavior towards self, others, and animals, and role performance which includes an assessment of:~~

~~a. The child’s overt, daily actions toward self and others;~~

~~b. The child’s age and developmental stage;~~

~~c. The type and degree of trauma experienced by the child; and~~

~~d. The child’s role performance including but not limited to:~~

~~1. Family expectations, such as self care, household chores or responsibilities, and following family rules;~~

~~2. School expectations, such as attendance, following school rules, completing school work, and passing academic subjects; and~~

~~3. Employment expectations for older children, such as adhering to work schedules and work tasks;~~

~~(2) Alcohol and other drug use which includes an assessment of the usage and its effects on daily tasks and functioning;~~

~~(3) Medical, psychological, and developmental status which includes an assessment of the child's physical, emotional, and psychological well-being; and~~

~~(4) Caregiver resources, which includes an assessment of the knowledge, skills, and abilities of the foster parent to meet the needs of the child.~~

~~(e) A child shall experience difficulty in one or more areas of functioning in order to qualify for a payment level.~~

~~—(f) There shall be 4 levels of payment to foster parents for supplemental foster care as described below:~~

~~(1) Level I shall reflect a mild range of functioning by the child, which includes but is not limited to:~~

~~a. In the area of behavior towards self, others, or animals, the child's behavior:~~

~~1. Is impulsive without regard to personal risk, health and well-being;~~

~~2. Is unusually quarrelsome or annoying to others;~~

~~3. Is verbally abusive;~~

~~4. Is distant in interactions with adults and peers;~~

~~5. Is immature and irresponsible; or~~

~~6. Is withdrawn or avoidant;~~

~~b. In the area of alcohol and other drug use, the child's behavior shows:~~

~~1. Use once per week, but without intoxication;~~

~~2. Occasional excess use;~~

~~3. Use to achieve mood change; and~~

~~4. For children 12 years and younger, any history of use;~~

~~c. In the area of medical, psychological, and developmental status, the child has any diagnosis of a mild condition documented by a licensed practitioner; and~~

~~d. In the area of caregiver resources, the caregiver:~~

~~1. Has specialized parenting knowledge and skills for managing difficult behaviors of the child;~~

~~2. Monitors school attendance on a daily basis;~~

~~3. Monitors visitations by family members and provides role modeling for the child's parents; and~~

~~4. Administers medications and medical procedures;~~

~~(2) Level II shall reflect a moderate range of functioning by the child which may include but is not limited to:~~

~~a. In the area of behavior towards self, others, or animals, the child exhibits:~~

~~1. Behavior that is frequently inappropriate and the cause of problems for self and others;~~

~~2. A consistent inability to set personal limits;~~

~~3. Stealing or hoarding;~~

~~4. Predominately manipulative behaviors;~~

~~5. Relationships frequently characterized by tension and conflict; and~~

~~6. Habitually poor judgment resulting in serious risk taking;~~

~~b. In the area of alcohol and other drug use, the child's behavior shows:~~

~~1. Accident or injury due to usage;~~

~~2. Police involvement;~~

~~3. Physical health problems;~~

~~4. That the child is in recovery, but at risk of relapse; and~~

~~5. For children 12 years or younger, any use without intoxication;~~

~~c. In the area of medical, psychological, and developmental status, the child has any diagnosis of a moderate medical or psychiatric condition documented by a licensed practitioner; and~~

~~d. In the area of caregiver resources, the caregiver provides:~~

~~1. Frequent daily supervision of the child related to personal hygiene;~~

~~2. Intensive parenting education during supervised parent-child visits; and~~

~~3. Supervision of medical and psychiatric conditions of the child;~~

~~(3) Level III shall reflect a severe range of functioning by the child which may include but is not limited to:~~

~~a. In the area of behavior towards self, others, or animals, the child's behaviors is:~~

- ~~1. Disruptive to self or others;~~
- ~~2. Prevents the establishment of age appropriate relationships; and~~
- ~~3. Severely destructive towards property;~~

~~b. In the area of alcohol and other drug use, the child's behavior shows:~~

- ~~1. Dependence on continuing acquisition and use to maintain daily functioning;~~
- ~~2. That use causes problems with family and friends; and~~
- ~~3. That the child is high or intoxicated at least once a week;~~

~~c. In the area of medical, psychological, and developmental status, the child has any diagnosis of a severe medical condition documented by a licensed practitioner; and~~

~~d. In the area of caregiver resources, the caregiver:~~

- ~~1. Has a high level of skill and training to minister to the child's daily needs;~~
- ~~2. Provides daily monitoring of the child and documents the behaviors; and~~
- ~~3. Participates on multi-disciplinary teams; and~~

~~(4) Level IV shall reflect a severe range of functioning by the child which may include but is not limited to:~~

~~a. In the area of behavior towards self, others, or animals, the child's behavior is:~~

- ~~1. Disruptive or potentially dangerous to self or others and places the child at risk of residential placement or confinement; and~~
- ~~2. Sexually assaultive to other children;~~

~~b. In the area of alcohol and other drug use, the child's behavior shows:~~

- ~~1. That the child engages in high risk behaviors to obtain alcohol or other drugs; and~~
- ~~2. Intoxicated states for the majority of the time;~~

~~c. In the area of medical, psychological, and developmental status, the child has any diagnosis of serious illness or handicapping condition requiring in-home care or services, documented by a licensed practitioner; and~~

~~d. In the area of caregiver resources, the caregiver:~~

- ~~1. Constantly monitors the child and provides one on one supervision; and~~

~~2. Provides specialized knowledge and skills to manage the child's behaviors.~~

Change section heading of He-C 6347.08, effective 9-20-08 (Document #9266), to read as follows:

He-C 6347.08 Application Process For Payment Standards For Respite and Supplemental Foster Care Services.

Appendix

Rule Section	Statute Implemented
He-C 6423.01 – 6423.06	RSA 170-E:34, I(f)
He-C 6347.03(v) (deleted)	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6347.06 (repealed)	RSA 170-G:4, XVIII; RSA 170-G:5; RSA 170-E:34